

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

GARY ARTHUR DONOVAN,

Plaintiff,

v.

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

Case No. 12-14671

Hon. Gerald E. Rosen

Magistrate Judge Laurie J. Michelson

**ORDER ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on November 20, 2013

PRESENT: Honorable Gerald E. Rosen
Chief Judge, United States District Court

On September 9, 2013, Magistrate Judge Laurie J. Michelson issued a Report and Recommendation ("R & R") recommending that the Court grant in part Plaintiff Gary Arthur Donovan's motion for summary judgment, deny the Defendant Commissioner of Social Security's motion for summary judgment, and remand this case to the Defendant Commissioner for further proceedings on the question whether Plaintiff is entitled to a closed period of disability benefits. Plaintiff filed an objection to the R & R on September 23, 2013, and Defendant filed a response to this objection on September 27, 2013. The Court has now reviewed the R & R, Plaintiff's objection, Defendant's

response, the parties' underlying motions, and the remainder of the record. For the reasons stated below, the Court overrules Plaintiff's objection and adopts the Magistrate Judge's R & R as the opinion of this Court.

Plaintiff has lodged only a single objection to the R & R. Specifically, while the Magistrate Judge has recommended that this case be remanded for further administrative proceedings as to Plaintiff's eligibility for a closed period of disability benefits, (*see* R & R at 22-24), Plaintiff argues that the scope of this recommended remand should be expanded to consider whether he should be awarded benefits going forward. Yet, the Magistrate Judge found that the Administrative Law Judge ("ALJ") erred only as to the backward-looking question of Plaintiff's eligibility for a closed period of disability benefits, and not as to his entitlement to an ongoing award of benefits. As to this latter issue, the Magistrate Judge determined that the record provided a reasonable basis for the ALJ to infer that Plaintiff would not continue to experience the ongoing, work-preclusive absenteeism that would warrant an open-ended award of benefits. (*See* R & R at 22.) Because this aspect of the ALJ's decision is supported by substantial evidence, and because Plaintiff does not demonstrate otherwise in his objection to the R & R, but suggests only the bare possibility that a remand might shed further light on his ability to maintain regular attendance going forward, the Court finds no basis for insisting that the ALJ revisit a ruling that has withstood judicial scrutiny.

For these reasons,

NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiff's September 23,

2013 objection to the Magistrate Judge's September 9, 2013 Report and Recommendation is OVERRULED. IT IS FURTHER ORDERED that the Magistrate Judge's Report and Recommendation (docket #16) is ADOPTED as the opinion of this Court. Finally, IT IS FURTHER ORDERED that, for the reasons set forth in the Magistrate Judge's Report and Recommendation, Plaintiff's March 15, 2013 motion for summary judgment (docket #9) is GRANTED IN PART, and Defendant's May 29, 2013 motion for summary judgment (docket #14) is DENIED. In light of these rulings, this matter will be remanded to the Defendant Commissioner for further proceedings in accordance with the Magistrate Judge's Report and Recommendation.

s/Gerald E. Rosen
Chief Judge, United States District Court

Dated: November 20, 2013

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on November 20, 2013, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5135